

# Laws and Rules and Regulations Relating to the Practice of Hearing Aid Dispensing

Laws .....	Blue Pages
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Relating to the Practice of Hearing Aid Dispensing  
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# **Business and Professions Code Chapter 7.5**

## **Hearing Aid Dispenser License Law**

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### **Article 1. General Provisions**

#### **Definitions**

**3300.** For the purposes of this chapter, the following definitions shall apply:

(a) "Person," includes any individual, partnership, corporation, limited liability company, or other organization, or any combination thereof.

(b) "Advertise," and any of its variants, as used in this chapter, includes the use of a newspaper, magazine, or other publication, book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label, tag, window display, store sign, radio, or television announcement, or any other means or methods now or hereafter employed to bring to the attention of the public the practice of fitting or selling of hearing aids.

(c) "Department" means the Department of Consumer Affairs.

(d) "Bureau" means the Hearing Aid Dispensers Bureau.

(e) "Advisory committee" or "committee" means the Hearing Aid Dispensers Advisory Committee.

(f) "License" includes a temporary license.

(g) "Licensee" means a person holding a license.

(h) "Hearing aid" means any wearable instrument or device designed for, or offered for, the purpose of, aiding or compensating for impaired human hearing.

(i) "Director" means the Director of Consumer Affairs.

(j) "Chief" means the Chief of the Hearing Aid Dispensers Bureau.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

#### **"Advertise" Defined**

**3301.** (Repealed by Stats. 2000, Ch. 277; effective January 1, 2001.)

#### **"Board" Defined**

**3302.** (Repealed by Stats. 2000, Ch. 277; effective January 1, 2001.)

#### **"Committee" Defined**

**3303 .** (Repealed by Stats. 2000, Ch. 277; effective January 1, 2001.)

#### **"License" Defined**

**3304.** (Repealed by Stats. 2000, Ch. 277; effective January 1, 2001.)

#### **"Hearing Aid" Defined**

**3305.** (Repealed by Stats. 2000, Ch. 277; effective January 1, 2001.)

#### **"Director" Defined**

**3305.5.** (Repealed by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **"Practice of Fitting or Selling Hearing Aids" Defined**

**3306.** (a) "Practice of fitting or selling hearing aids," as used in this chapter, means those practices used for the purpose of selection and adaptation of hearing aids, including direct observation of the ear, testing of hearing in connection with the fitting and selling of hearing aids, taking of ear mold impressions, fitting or sale of hearing aids, and any necessary postfitting counseling.

The practice of selling hearing aids does not include the act of concluding the transaction by a retail clerk.

When any audiometer or other equipment is used in the practice of fitting or selling hearing aids, it shall be kept properly calibrated and in good working condition, and the calibration of the audiometer or other equipment shall be checked at least annually.

(b) A hearing aid dispenser shall not conduct diagnostic hearing tests when conducting tests in connection with the fitting and selling of hearing aids.

(c) Hearing tests conducted pursuant to this chapter shall include those that are in compliance with the Food and Drug Administration Guidelines for Hearing Aid Devices and those that are specifically covered in the licensing examination prepared and administered by the bureau.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Hearing Screenings**

**3306.3.** A licensee may conduct hearing screenings at a health fair or similar event by the application of a binary puretone screening at a preset intensity level for the purpose of identifying the need for further hearing or medical evaluation.

Upon the conclusion of each hearing screening, the licensee shall present to the person whose hearing was screened a written statement containing the following provisions:

"Results of a hearing screening are not a medical evaluation of your ear nor a diagnosis of a hearing disorder but are only the identification of the need for further medical or hearing evaluation."

A licensee conducting hearing screenings pursuant to this section shall not make or seek referrals for testing, fitting, or dispensing of hearing aids.

(Added by Stats. 1992, Ch. 573.)

## **Fitting Hearing Aids**

**3306.5.** In fitting hearing aids, a hearing aid dispenser shall not take facial measurements or fit, adjust, or adapt lenses or spectacle frames, except that a hearing aid dispenser may replace the temple or temples of a person's spectacle frames with a temple or temples incorporating hearing aid components.

(Amended by Stats. 1994, Ch. 26.)

## **"Hearing Aid Dispenser" Defined**

**3307.** "Hearing aid dispenser," as used in this chapter, means a person engaged in the fitting or selling of hearing aids to an individual with impaired hearing.

(Amended by Stats. 1979, Ch. 970.)

## **"Sell or Sale" Defined**

**3308.** "Sell" or "sale" means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with distributors or dealers.

## **Title**

**3310.** This chapter shall be known and may be cited as the Hearing Aid Dispensers Licensing Law.

(Added by Stats. 1988, Ch. 1162.)

## **Hearing Aid Dispensers Bureau**

**3320.** (a) There is within the jurisdiction of the department a Hearing Aid Dispensers Bureau. The bureau is under the supervision and control of the director. The duty of enforcing and administering this

chapter is vested in the chief, who is responsible to the director. The director may adopt and enforce those rules and regulations that he or she determines are reasonably necessary to carry out the purposes of this chapter and to declare the policy of the bureau, including a system for the issuance of citations for violations of this chapter as specified in Section 125.9. These rules and regulations shall be adopted pursuant to Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The Governor shall appoint a chief of the bureau, at a salary to be fixed and determined by the director with the approval of the Director of Finance. The chief shall serve under the direction and supervision of the director and at the pleasure of the Governor.

(Amended and renumbered by Stats. 2000, Ch. 277; effective January 1, 2001).

**3321.** (a) There is within the bureau a Hearing Aid Dispensers Advisory Committee. The committee shall consist of seven members, three of whom shall be licensed hearing aid dispensers and four of whom shall be public members. Only one of the licensed members may also be licensed as an audiologist.

(b) Each member of the committee shall hold office for a term of four years. Each member shall hold office until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs.

(c) Vacancies occurring shall be filled by appointment for the unexpired term. Each member of the committee shall be eligible for reappointment in the discretion of the appointing power, provided that reappointed members shall, at the time of the reappointment, hold a valid license under this chapter. No person may serve as a member of the committee for more than two full consecutive terms.

(d) The Governor shall appoint two of the public members and the three licensees. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member. When appointing the public members, consideration shall be given to appointing a hearing-impaired individual.

(e) Every member of the committee shall receive per diem and expenses as provided in Section 103 and 113.

(f) The advisory committee shall:

(1) Examine the functions and policies of the bureau and make recommendations with respect to policies, practices, and regulations as may be deemed important and necessary by the director or the chief to promote the interests of consumers or that otherwise promote the welfare of the public.

(2) Consider and make appropriate recommendations to the bureau in all matters relating to hearing aid dispensing in this state.

(3) Provide assistance as may be requested by the bureau in the exercise of its powers or duties.

(g) The bureau shall meet and consult with the committee regarding general policy issues related to hearing aid dispensing.

(Added by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Officers**

**3322.** (Repealed by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Compensation**

**3323.** (Repealed by Stats. 2000, Ch. 277; effective January 1, 2001.)

# **Article 2. Administration**

## **Meetings**

**3325.** Notice of each meeting of the committee shall be given in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Part 1 of Division 3 of Title 2 of the Government Code).

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Records**

**3326.** The bureau shall keep a record of all prosecutions for violations of this chapter and of all examinations held for applicants for licenses together with the names and addresses of all persons taking examinations and of their success or failure to pass them.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Course of Instruction**

**3327.** The bureau may recommend the preparation of and administration of a course of instruction concerned with the fitting and selection of hearing aids. The bureau may require that prospective licensees shall first complete the required course of instruction or otherwise satisfy the bureau that the licensee possesses the necessary background and qualifications to fit or sell hearing aids. If the bureau promulgates regulations to implement this section to require a course of instruction concerned with fitting and selling hearing aids, it shall obtain the advice of persons knowledgeable in the preparation and administration of such a course of instruction.

The bureau may publish and distribute information concerning the examination requirements for obtaining a license to engage in the practice of fitting and selling hearing aids within this state.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Continuing Education**

**3327.5.** All holders of licenses to sell or fit hearing aids shall continue their education after receiving the license. The bureau shall provide by regulation, as a condition to the renewal of a license, that licensees shall submit documentation satisfactory to the bureau that they have informed themselves of current practices related to the fitting of hearing aids by having pursued courses of study satisfactory to the bureau or by other means defined as equivalent by the bureau.

Continuing education courses shall be subject to monitoring to ensure compliance with the regulations adopted by the bureau pursuant to this section.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Rules and Regulations**

**3328.** The bureau may adopt, amend, or repeal, in accordance with the provisions of the Administrative Procedure Act, regulations that are necessary to enable the bureau to carry into effect the provisions of law relating to the practice of fitting or selling hearing aids.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Hearings**

**3329.** (a) The bureau may prosecute any and all persons for any violation of this chapter.

(b) The director shall hear and decide all matters, including but not limited to, any contested case or any petition for reinstatement or modification of probation, or may assign any of those matters to an administrative law judge in accordance with the Administrative Procedure Act. Except as otherwise provided in this chapter, all hearings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Personnel and Investigations**

**3330.** The bureau may employ the personnel necessary to administer this chapter, other than personnel to perform inspections or investigations, and may incur other expenses as are necessary for the administration of this chapter. All inspections or investigations made pursuant to this chapter shall be made by personnel from the bureau or from the Division of Investigation of the department.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

# **Article 3. Licenses**

## **License Required**

**3350.** It is unlawful for an individual to engage in the practice of fitting or selling of hearing aids, or to display a sign or in any other way to advertise or hold himself or herself out as being so engaged without having first obtained a license from the bureau under the provisions of this chapter. Nothing in this chapter shall prohibit a corporation, partnership, trust, association or other like organization maintaining an



established business address from engaging in the business of fitting or selling, or offering for sale, hearing aids at retail without a license, provided that any and all such fitting or selling of hearing aids is conducted by the individuals who are licensed pursuant to the provisions of this chapter. A person whose license as a hearing aid dispenser has been suspended or revoked shall not be the proprietor of a business which engages in the fitting or selling of hearing aids nor shall that person be a partner, shareholder, member, or fiduciary in a partnership, corporation, association, or trust which maintains or operates that business, during the period of the suspension or revocation. This restriction shall not apply to stock ownership in a corporation that is listed on a stock exchange regulated by the Securities and Exchange Commission if the stock is acquired in a transaction conducted through that stock exchange.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Exemptions from License**

**3351.** This chapter does not apply to a person engaged in the practice of fitting hearing aids if his practice is for a governmental agency, or private clinic, or is part of the academic curriculum of an accredited institution of higher education, or part of a program conducted by a public, charitable institution or other nonprofit organization, and who does not engage directly or indirectly in the sale or offering for sale of hearing aids.

(Added by Stats. 1970, Ch. 1514 § 2, operative January 15, 1971)

## **Exemption: Physician and Surgeon**

**3351.3.** This chapter does not apply to nor affect any physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 who does not directly or indirectly engage in the sale or offering for sale of hearing aids, nor to any audiologist licensed under Chapter 5.3 (commencing with Section 2530), or to an individual supervised by such audiologist in conducting fitting procedures, and who does not directly or indirectly engage in the sale or offering for sale of hearing aids.

(Amended by Stats. 1979, Ch. 970.)

## **Catalog Sales**

**3351.5.** (a) Hearing aids may be sold by catalog or direct mail provided that:

(1) The seller is licensed as a hearing-aid dispenser in this state.

(2) There is no fitting, selection, or adaptation of the instrument and no advice is given with respect to fitting, selection, or adaptation of the instrument and no advice is given with respect to the taking of an ear impression for an earmold by the seller.

(3) The seller has received a statement which is signed by a physician and surgeon, audiologist, or a hearing-aid dispenser, licensed by the State of California which verifies that Section 3365.5 and subdivision (b) of Section 3427.5 have been complied with.

(b) A copy of the statement referred to in paragraph (3) of subdivision (a) shall be retained by the seller for a period provided for in section 3366.

(c) A licensed hearing-aid dispenser who sells a hearing aid under this section shall not be required to comply with subdivision (b) of Section 3427.5.

(Repealed and added by Stats. 1990, Ch. 514.)

## **Applications**

**3352.** Each person desiring to obtain a license to engage in the practice of fitting or selling hearing aids shall make application to the bureau. The application shall be made upon a form and shall be made in such manner as is provided by the bureau and shall be accompanied by the fee provided for in Section 3456.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Examination Requirements**

**3353.** (a) The bureau shall prepare, approve, grade, and conduct examinations of applicants for a hearing aid dispenser's license. The bureau may provide that the preparation and grading of the examination be conducted by a competent person or organization other than the bureau, provided, however, that the bureau shall establish the guidelines for the examination and shall approve the actual examination.

(b) Each applicant shall take and pass a written examination and a practical examination compiled at the direction of the bureau covering the critical tasks involved in the fitting and selling of hearing aids and the knowledge, skills, and abilities needed to perform those tasks safely and competently.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Issuance of License**

**3354.** The bureau shall issue a license to all applicants who have satisfied this chapter, who are at least 18 years of age, who possess a high school diploma or its equivalent, who have not committed acts or crimes constituting grounds for denial of licensure under Section 480, and who have paid the fees provided for in Section 3456. No license shall be issued to any person other than an individual.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Temporary License**

**3356.** (a) An applicant who has fulfilled the requirements of Section 3352 and has made application therefor, may have a temporary license issued to him or her upon satisfactory proof to the bureau that the applicant holds a hearing aid dispenser's license in another state, that the licensee has not been subject to formal disciplinary action by another licensing authority, and that the applicant has been engaged in the fitting and sale of hearing aids for the two years immediately prior to application.

(b) A temporary license issued pursuant to this section shall be valid for one year from the date of issuance and is not renewable. A temporary license shall automatically terminate upon issuance of a license prior to expiration of the one-year period.

(c) The holder of a temporary license issued pursuant to this section who fails either license examination shall be subject to and shall comply with the supervision requirements of Section 3357 and any regulations adopted pursuant thereto.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Temporary License**

**3357.** (a) An applicant who has fulfilled the requirements of Section 3352, and has made application therefor, and who proves to the satisfaction of bureau that he or she will be supervised and trained by a hearing aid dispenser who is approved by the bureau may have a temporary license issued to him or her. The temporary license shall entitle the temporary licensee to fit or sell hearing aids as set forth in regulations of the bureau. The supervising dispenser shall be responsible for any acts or omissions committed by a temporary licensee under his or her supervision that may constitute a violation of this chapter.

(b) The bureau shall adopt regulations setting forth criteria for its refusal to approve a hearing aid dispenser to supervise a temporary licensee, including procedures to appeal that decision.

(c) A temporary license issued pursuant to this section is effective and valid for six months from date of issue. The bureau may renew the temporary license for an additional period of six months. The bureau shall not issue more than two renewals of a temporary license to any applicant. If a temporary licensee who is entitled to renew a temporary license does not renew the temporary license and applies for a new temporary license at a later time, the new temporary license shall only be issued and renewed subject to the limitations set forth in this subdivision.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **License Examination**

**3358.** A temporary licensee under Section 3357 shall take the license examination within the first 10 months after the temporary license is issued. Failure to take the license examination within that time shall result in expiration of the temporary license, and it shall not be renewed unless the temporary licensee has first taken the licensure examination. The bureau, however, may in its discretion renew the temporary license if the licensee failed to take the necessary examination due to illness or other hardship.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Temporary License Limitations**

**3359.** (a) A temporary licensee shall not be the sole proprietor of, manage, or independently operate a business which engages in the fitting or sale of hearing aids.

(b) A temporary licensee shall not advertise or otherwise represent that he or she holds a license as a hearing aid dispenser.

(Added by Stats. 1989, Ch. 302.)

## **Examinations**

**3360.** Practical examinations shall be held by the bureau at least twice a year. The time and place of any practical examination shall be fixed by the bureau at least 45 days prior to the date it is to be held.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Passing Score**

**3361.** Every applicant who obtains a passing score determined by the Angoff criterion-referenced method of establishing the point in each examination shall be deemed to have passed that examination. An applicant shall pass the written examination before he or she may take the practical examination. An applicant shall obtain a passing score on both the written and the practical examination in order to be issued a license.

(Repealed and added by Stats. 1992, Ch. 1289.)

## **Business Address**

**3362.** (a) Before engaging in the practice of fitting or selling hearing aids, each licensee shall notify the bureau in writing of the address or addresses where he or she is to engage, or intends to engage, in the fitting or selling of hearing aids, and of any changes in his or her place of business.

(b) If a street address is not the address at which the licensee receives mail, the licensee shall also notify the bureau in writing of the mailing address for each location where the licensee is to engage, or intends to engage, in the fitting or selling of hearing aids, and of any change in the mailing address of his or her place or places of business.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Display of License**

**3363.** Each holder of a license shall keep it conspicuously posted in his office or place of business at all times.

(Added by Stats. 1970, Ch. 1514 § 2, operative January 15, 1971)

## **Registered Place of Business; Duplicate License**

**3364.** (a) Every licensee who engages in the practice of fitting or selling hearing aids shall have and maintain an established retail business address to engage in such fitting or selling, routinely open for service to customers or clients. The address of the licensee's place of business shall be registered with the bureau as provided in Section 3362.

(b) Except as provided in subdivision (c), if a licensee maintains more than one place of business within this state he or she shall apply for and procure a duplicate license for each branch office maintained. Such application shall state the name of the person and the location of the place or places of business for which such duplicate license is desired.

(c) A hearing aid dispenser may, without obtaining a duplicate license for a branch office, engage on a temporary basis in the fitting or selling of hearing aids at the primary or branch location of another licensee's business or at a location or facility which he or she may use on a temporary basis, provided, that, such hearing aid dispenser notifies the bureau in advance in writing of the dates and addresses of such businesses, locations or facilities at which he or she will engage in the fitting or selling of hearing aids.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## Written Receipts

**3365.** A licensee shall, upon the consummation of a sale of a hearing aid, deliver to the purchaser a written receipt, signed by or on behalf of the licensee, containing all of the following:

- (a) The date of consummation of the sale.
- (b) Specifications as to the make, serial number, and model number of the hearing aid or aids sold.
- (c) The address of the principal place of business of the licensee, and the address and office hours at which the licensee shall be available for fitting or postfitting adjustments and servicing of the hearing aid or aids sold.
- (d) A statement to the effect that the aid or aids delivered to the purchaser are used or reconditioned, as the case may be, if that is the fact.
- (e) The number of the licensee's license and the name and license number of any other hearing aid dispenser or temporary licensee who provided any recommendation or consultation regarding the purchase of the hearing aid.
- (f) The terms of any guarantee or written warranty, required by Section 1793.02 of the Civil Code, made to the purchaser with respect to the hearing aid or hearing aids.

(Amended by Stats. 1994, Ch. 26.)

## Conditions for Referral

**3365.5.** Whenever any of the following conditions are found to exist either from observations by the licensee or on the basis of information furnished by the prospective hearing aid user, a licensee shall, prior to fitting or selling a hearing aid to any individual, suggest to that individual in writing that his best interests would be served if he would consult a licensed physician specializing in diseases of the ear or if no such licensed physician is available in the community then to a duly licensed physician:

- (1) Visible congenital or traumatic deformity of the ear.
- (2) History of, or active drainage from the ear within the previous 90 days.
- (3) History of sudden or rapidly progressive hearing loss within the previous 90 days.
- (4) Acute or chronic dizziness.
- (5) Unilateral hearing loss of sudden or recent onset within the previous 90 days.
- (6) Significant air-bone gap (when generally acceptable standards have been established).

No such referral for medical opinion need be made by any licensee in the instance of replacement only of a hearing aid which has been lost or damaged beyond repair within one year of the date of purchase.

A copy of the written recommendation shall be retained by the licensee for the period provided for in Section 3366. A person receiving the written recommendation who elects to purchase a hearing aid shall sign a receipt for the same, and the receipt shall be kept with the other papers retained by the licensee for the period provided for in Section 3366. Nothing in this section required to be performed by a licensee shall mean that the licensee is engaged in the diagnosis of illness or the practice of medicine or any other activity prohibited by the provisions of this code.

(Amended by Stats. 1979, Ch. 970.)

## Age Limitations-Examination

**3365.6.** No hearing aid shall be sold by an individual licensed under this chapter, to a person 16 years of age or younger, unless within the preceding six months a recommendation for a hearing aid has been made by both a board-certified, or a board-eligible physician specializing in otolaryngology, and by an audiologist certified by the American Speech and Hearing Association. A replacement of an identical hearing aid within one year shall be an exception to this requirement.

(Added by Stats. 1970, Ch. 1514 § 2, operative January 15, 1971)

## **Records Required**

**3366.** A licensee shall, upon the consummation of a sale of a hearing aid, keep and maintain records in his office or place of business at all times and each such record shall be kept and maintained for a seven-year period. These records shall include:

- (a) Results of test techniques as they pertain to fitting of the hearing aid.
- (b) A copy of the written receipt required by Section 3365 and the written recommendation and receipt required by Section 3365.5 when applicable.

(Added by Stats. 1970, Ch. 1514 § 2, operative January 15, 1971)

## **Owner, Manager, or Franchisee Responsible**

**3367.** A hearing aid dispenser who is the owner, manager, or franchisee at a location where hearing aids are fit or sold, shall be responsible for the adequacy of the fitting or selling of any hearing aid fit and sold by any licensee or licensees at that location.

(Added by Stats. 1982, Ch. 3.)

# **Article 4. Revocation and Suspension**

## **Proceedings Required**

**3400.** Proceedings to deny, suspend, or revoke a license under this chapter, shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the bureau shall have all of the powers granted therein.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Violations**

**3401.** The bureau may deny, issue subject to terms and conditions, suspend, or revoke a license, or impose conditions of probation upon a licensee, for any of the following causes:

- (a) Gross incompetency which includes, but is not limited to, the improper or unnecessary fitting of a hearing aid.
- (b) Gross negligence.
- (c) Repeated negligent acts.
- (d) Conviction of any crime substantially related to the qualifications, functions or duties of a hearing aid dispenser.
- (e) Obtaining a license by fraud or deceit.
- (f) Use of the term "doctor" or "physician" or "clinic" or "audiologist," or any derivation thereof, except as authorized by law.
- (g) Fraud or misrepresentation in the fitting or selling of a hearing aid.
- (h) The employment, to perform any act covered by this chapter, of any person whose license has been suspended, revoked, or who does not possess a valid license issued under this chapter.
- (i) The use, or causing the use, of any advertising or promotional literature in a manner that has the capacity or tendency to mislead or deceive purchasers or prospective purchasers.
- (j) Habitual intemperance in the use of alcohol or any controlled substance.
- (k) Permitting another to use his or her license for any purpose.
- (l) Violation of any provision of this chapter or of any regulation adopted pursuant to this chapter.
- (m) Any cause that would be grounds for denial of an application for a license.
- (n) Violation of Section 1689.6 or 1793.02 of the Civil Code.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Denial**

**3402.** Upon denial of an application for license, the bureau shall notify the applicant in writing, stating (1) the reason for the denial and (2) that the applicant has a right to a hearing under Section 3400 if he or she makes written request therefor within 60 days after notice of denial. Service of the notice required by this section may be made by certified mail addressed to the applicant at the latest address filed by the

applicant in writing with the bureau in his or her application or otherwise.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Conviction of Crime**

**3403.** A plea or verdict of guilty or a conviction following a plea of nolo contendere, made to a charge substantially related to the qualifications, functions and duties of a hearing aid dispenser is deemed to be a conviction within the meaning of this article. The bureau may order the license suspended or revoked, impose probationary conditions on a licensee, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Examination for Reinstatement**

**3404.** Before setting aside the revocation or suspension of any license or modifying the probation of any licensee, the bureau may require the petitioner to pass the regular examination given for applicants for licenses.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Article 5. Criminal Offenses**

### **Unlawful Acts**

**3420.** Any person who violates any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than 10 days nor more than one year, or by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or by both such fine and imprisonment.

(Added by Stats. 1970, Ch. 1514 § 2, operative January 15, 1971)

### **Sale of License**

**3421.** It is unlawful to sell or barter, or offer to sell or barter, any license issued by the bureau.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Purchase of License**

**3422.** It is unlawful to purchase or procure by barter any license issued by the bureau with intent to use the same as evidence of the holder's qualification to practice the fitting or selling of hearing aids.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Alteration of License**

**3423.** It is unlawful to alter with fraudulent intent in any material regard a license issued by the bureau.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Use of Illegal License**

**3424.** It is unlawful to use or attempt to use any license issued by the bureau that has been purchased, fraudulently issued, counterfeited, or materially altered as a valid license.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **False Statements**

**3426.** It is unlawful to willfully make any false statement in a material regard in an application for an

examination before the bureau for a license.  
(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Unlicensed Practice**

**3427.** It is unlawful to engage in the practice of fitting or selling hearing aids in this state without having at the time of so doing a valid, unrevoked and unexpired license or temporary license.  
(Amended by Stats. 1979, Ch. 970.)

### **Unlawful Practice**

**3427.5** It is unlawful for a licensed hearing aid dispenser to fit or sell a hearing aid unless he or she has first (a) complied with all provisions of state laws and regulations relating to the fitting or selling of hearing aids, (b) conducted a direct observation of the purchaser's ear canals, and (c) informed the purchaser of the address and office hours at which the licensee shall be available for fitting or postfitting adjustments and servicing of the hearing aid or aids sold.  
(Amended by Stats. 1982, Ch. 868.)

### **Advertising Without a Valid License**

**3428.** It is unlawful to advertise by displaying a sign or otherwise hold himself out to be a person engaged in the practice of fitting or selling hearing aids without having at the time of so doing a valid, unrevoked license or temporary license.  
(Amended by Stats. 1979, Ch. 970.)

### **Practice Without a Business Address**

**3429.** It is unlawful to engage in the practice of fitting or selling hearing aids without the licensee having and maintaining an established business address, routinely open for service to his clients.  
(Amended by Stats. 1979, Ch. 970.)

### **Injunction**

**3430.** In addition to other proceedings provided for in this chapter, whenever any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, an offense against this chapter, the superior court for the county wherein the acts or practices take place or are about to take place, may issue an injunction or other appropriate order, restraining such conduct on application of the bureau, the Attorney General, or the district attorney of the county. If the acts or practices constitute, or will constitute, an offense against Section 3306.5, such application to the superior court may be made by the State Board of Optometry. The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.  
(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Article 6. Hearing Tests**

### **Hearing Tests**

**3440.** When tests are conducted by persons licensed under this chapter in connection with the fitting and selling of hearing aids, the provisions of this chapter shall apply.  
(Amended by Stats. 1997, Ch. 807.)

## **Article 7. Revenue**

### **Expiration and Renewal of License**

**3451.** (a) A license issued under this chapter expires at midnight on its assigned renewal date.  
(b) To renew an unexpired license, the licensee shall, on or before the date of expiration of the license, apply for renewal on a form provided by the bureau, accompanied by the prescribed renewal fee.

(c) Temporary license holders shall renew their licenses in accordance with Section 3357, and apply for that renewal on a form provided by the bureau, accompanied by the prescribed renewal fee for temporary licenses.

(d) Each duplicate license issued for a branch office shall expire on the same date as the permanent license of the hearing aid dispenser to whom the duplicate license was issued. These duplicate licenses shall be renewed according to subdivision (b).

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Delinquent Licenses**

**3452.** Except as otherwise provided in this chapter, an expired license may be renewed at any time within three years after its expiration on filing of an application for renewal on a form prescribed by the bureau, and payment of all accrued and unpaid renewal fees. If the license is renewed after its expiration the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter.

Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect through the date provided in Section 3451 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Renewal of Suspended Licenses**

**3453.** A license which has been suspended is subject to expiration and shall be renewed as provided in this article but such renewal does not entitle the holder of the license, while it remains suspended and until it is reinstated, to engage in the fitting or selling of hearing aids, or in any other activity or conduct in violation of the order or judgment by which the license was suspended. A license which has been revoked is subject to expiration, but it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition precedent to its reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

(Amended by Stats. 1979, Ch. 970.)

### **Failure to Renew Within Three Years**

**3454.** A license that is not renewed within three years after its expiration may not be renewed, restored, reissued, or reinstated thereafter, but the holder of the expired license may apply for and obtain a new license if all of the following apply:

(a) He or she has not committed acts or crimes constituting grounds for denial of licensure under Section 480.

(b) He or she pays all the fees which would be required of him or her if he or she were then applying for a license for the first time.

(c) He or she takes and passes the examination that would be required of him or her if he or she were then applying for a license for the first time, or otherwise establishes to the satisfaction of the bureau that he or she is qualified to engage in the practice of fitting or selling hearing aids. The bureau may, by regulation, provide for the waiver or refund of all or any part of the application fee in those cases in which a license is issued without an examination under this section.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Hearing Aid Dispensers Fund**

**3455.** There is established in the State Treasury the Hearing Aid Dispensers Fund. All fees collected pursuant to this chapter shall be paid by the bureau into the fund. All money in the Hearing Aid Dispensers Fund is continuously appropriated to the bureau to carry out the purposes of this chapter.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)



## Fees

**3456.** The amount of fees and penalties prescribed by this chapter shall be those set forth in this section unless a lower fee is fixed by the bureau:

(a) The fee for applicants applying for the first time for a license is seventy-five dollars (\$75) which shall not be refunded, except to applicants who are found to be ineligible to take an examination for a license. Those applicants are entitled to a refund of fifty dollars (\$50).

(b) The fees for taking or retaking the written and practical examinations shall be amounts fixed by the bureau, which shall be equal to the actual cost of preparing, grading, analyzing, and administering the examinations.

(c) The initial temporary license fee is one hundred dollars (\$100). The fee for renewal of a temporary license is one hundred dollars (\$100) for each renewal.

(d) The initial permanent license fee is two hundred eighty dollars (\$280). The fee for renewal of a permanent license is not more than two hundred eighty dollars (\$280) for each renewal.

(e) The initial branch office license fee is twenty-five dollars (\$25). The fee for renewal of a branch office license is twenty-five dollars (\$25) for each renewal.

(f) The delinquency fee is twenty-five dollars (\$25).

(g) The fee for issuance of a replacement license upon loss of an original license or upon change of name authorized by law of a person holding a license under this chapter is twenty-five dollars (\$25).

(h) The continuing education course approval application fee is fifty dollars (\$50). The fee for a continuing education course transcript is ten dollars (\$10).

(i) The fee for official certification of licensure is fifteen dollars (\$15). The fee for a license confirmation letter is ten dollars (\$10).

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

(Revised 1/2001)

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# Title 16, Chapter 13.3

## Hearing Aid Dispensers Regulations

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### Article 1. General Provisions

#### 1399.100. Citation.

This chapter may be cited and referred to as the "Hearing Aid Dispenser Regulations."

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Section 3328, Business & Professions Code.

#### 1399.101. Location of Offices.

The principal office of the Hearing Aid Dispensers Bureau of the Department of Consumer Affairs is located at 1625 North Market Blvd., Suite S-209, Sacramento, CA 95834.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Section 3328, Business & Professions Code.

HISTORY: Amendment of Section 1399.101 filed 4/27/01; approved 6/11/01.

#### 1399.102. Definitions.

For the purpose of the regulations contained in this chapter, the term:

(a) "Code" means the Business and Professions Code.

(b) "Supervisor" means a person who holds a license issued pursuant to the provisions of Sections 3354 and 3356 of the code and who accepts responsibility for the supervision and training of a person issued a temporary license under Section 3357 of the code.

(c) "Trainee-applicant" means a person holding a temporary license issued pursuant to Section 3357 of the code.

(d) "Supervision" means adequate direction and inspection by a supervisor.

(e) "Training" means the instruction of a trainee-applicant in the fitting or selling of hearing aids.

(f) "Trainee-applicant" means a temporary licensee authorized to fit or sell hearing aids under

Section 3357 of the code under the supervision of a licensed hearing aid dispenser.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Sections 3328 and 3357, Business & Professions Code.

HISTORY: Amendment of Section 1399.102 filed 4/27/01; approved 6/11/01.

#### 1399.103. Rules of Order.

NOTE: Authority cited: Section 3328, Business & Professions Code.

HISTORY:

1. Repealer filed 5/6/83; effective thirtieth day thereafter (Register 83, No. 19).

#### 1399.104. Delegation of Functions.

HISTORY:

1. Repealer filed 4/27/01; approved 6/11/01.

#### 1399.105. Filing of Addresses.

Each person holding a license shall file with the bureau his or her proper and current business address, and shall report immediately to the bureau at its principal office any and all changes of address, giving both his or her old and new address.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Sections 3326, 3362, and 3451, Business & Professions Code.

HISTORY: Amendment of Section 1399.105 filed 4/27/01; approved 6/11/01.

### **1399.106. Regular Subcommittees.**

NOTE: Authority cited: Section 3328, Business & Professions Code.

HISTORY:

1. Repealer filed 5-6-83; effective thirtieth day thereafter (Register 83, No. 19).

### **1399.107. Chairmanship.**

NOTE: Authority cited: Section 3328, Business & Professions Code.

HISTORY:

1. Repealer filed 5-6-83; effective thirtieth day thereafter (Register 83, No. 19).

## **Article 2. Applications**

### **1399.110. Applications.**

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Section 3357, Business & Professions Code.

HISTORY:

1. Renumbering and amendment of Section 1399.110 to Section 1399.115 filed 5-6-83; effective thirtieth day thereafter (Register 83, No. 19).

### **1399.111. Abandonment of Application.**

(a) An applicant whose application for license is incomplete shall be deemed to have abandoned the application if he/she does not submit all required documents, data and information within one year from the date of the letter notifying the applicant that the application is incomplete.

(b) An applicant whose application for examination has been accepted shall be deemed to have abandoned the application if the applicant:

(1) does not take the written examination within one year from the date an eligibility letter was issued or does not take the practical examination within one year from the date the applicant passed the written examination; or

(2) after failing any examination, fails to take a re-examination within one year of the date of the letter notifying the applicant of such failure.

(c) An application submitted subsequent to the abandonment of a former application shall be treated as a new application.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Sections 3326 and 3352, Business & Professions Code.

HISTORY:

1. Repealer of Section 1399.111 and adding new Section 1399.111 filed 3-20-96; effective thirtieth day thereafter.

### **1399.112. Petition for Hearing.**

NOTE: Authority cited: Section 3328, Business & Professions Code.

HISTORY:

1. Repealer filed 5-6-83; effective thirtieth day thereafter (Register 83, No. 19).

### **1399.113. Review of Hearing Aid Dispenser Applications; Processing Time.**

(a) The bureau shall inform in writing an applicant for licensure as a hearing aid dispenser within 17 days of receipt of the initial application form whether the application is complete and accepted for filing or is deficient and what specific information is required.

(b) The bureau shall inform an applicant for licensure as a hearing aid dispenser within 189 days after completion of the application of its decision whether the applicant meets the requirements for licensure. "Completion of the application" means that a completed application form together with all required information, documentation and fees have been filed by the applicant. This period may be extended by that time necessary for retaking or rescheduling an examination.

(c) The minimum, median and maximum processing times for an application for licensure as a hearing aid dispenser from the time of receipt of the initial application until the bureau makes a final decision on the application are:

(1)	Minimum	--	68 days
(2)	Median	--	236 days
(3)	Maximum	--	437 days

These processing times apply to those applicants who take and pass the first available licensing examination.

NOTE: Authority cited: Section 3328, Business & Professions Code; and Section 15376, Government Code. Reference: Section 3352, Business & Professions Code; Section 15376, Government Code.

HISTORY: Amendment of Section 1399.113 filed 4/27/01; approved 6/11/01.

## **Article 3. Temporary Licenses**

### **1399.114. Temporary License Applications.**

(a) Any applicant for a temporary license under Section 3357 of the code shall provide the following information to the bureau in order to show satisfactory supervision and training:

- (1) Name, address, license number and the signature of his or her supervisor.
- (2) Identification of the supervisory facility by proprietary name and address.

(b) The supervisor shall file as an addendum to the application the following statements and information:

- (1) A general description of the supervisor's facility which shall include the:
  - (A) Equipment used in the fitting of hearing aids.
  - (B) Training material.
  - (C) Training space.
  - (D) Area in which hearing tests are given.
- (2) A description of the portable equipment and tools used outside the supervisory facility in the fitting or selling of hearing aids.

(3) Information that demonstrates adequate supervision and training will be provided in compliance with Section 1399.118.

(c) Any person holding a temporary license issued pursuant to sections 3356 or 3357 shall, upon passing the examination and receiving a license, surrender the temporary license to the bureau.

(d) An excessive number of trainee-applicants under the supervisor may preclude a finding by the bureau that the trainee-applicants will be adequately supervised and trained.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Sections 3352 and 3357, Business & Professions Code.

HISTORY:

1. Renumbering of Section 1399.115 to Section 1399.114 filed 1-24-91; effective thirtieth day thereafter.
2. Amendment of Section 1399.114 filed 4/27/01; approved 6/11/01.

### **1399.115 Denial, Suspension, or Revocation of Authority to Supervise**

(a) The bureau may refuse to approve or approve subject to terms and conditions a hearing aid dispenser's authority to supervise a trainee-applicant, or may suspend, revoke, or impose probationary conditions on a hearing aid dispenser's authority to supervise a trainee-applicant for any of the following causes:

(1) The failure to comply with Section 3357 of the code or any of the regulations contained in this article which is a prima facie violation, or is confirmed by an internal investigation report signed by the chief, or by formal investigation by the Division of Investigation of the department within the preceding 36 months. "Confirmed by formal investigation" means the investigator assigned the matter has written a final

investigation report which has been countersigned by a Supervising Special Investigator.

(2) The violation of any provision of the Hearing Aid Dispensers Licensing Law or the regulations contained in this chapter which is confirmed by an internal investigation report signed by the chief, or by a formal investigation by the Division of Investigation of the department within the preceding 36 months.

"Confirmed by formal investigation" means the investigator assigned the matter has written a final investigation report which has been countersigned by a Supervising Special Investigator.

(3) The dispenser's license has been revoked, suspended, or subject to any restrictions within the preceding 36 months.

(4) An Accusation has been filed against the dispenser under the Administrative Procedure Act by the Attorney General's office and the charges are pending.

(5) The provision of false or misleading information during the application process.

(6) The conviction of a crime involving fiscal dishonesty for which the dispenser has been on probation or parole within the preceding 36 months.

(b) The bureau shall refuse to approve a hearing aid dispenser's authority to supervise a trainee-applicant if the hearing aid dispenser has not possessed a valid, active license as a hearing aid dispenser in California for at least three (3) years preceding the date on which the application for approval was received by the bureau.

(c) A hearing aid dispenser may appeal the denial, suspension, revocation, or imposition of probationary conditions upon his or her authority to supervise a trainee-applicant by filing such an appeal in writing with the bureau's office in Sacramento within 60 days of denial, suspension, revocation or imposition of probationary conditions. The appeal will be considered by the bureau within 45 days of receipt of the appeal in the bureau's office. If action under this section results in the termination of supervision and training of a trainee-applicant, then the supervising hearing aid dispenser shall so notify the bureau in accordance with Section 1399.118, subsection (g).

NOTE: Authority Cited: Section 3328, Business and Professions Code. Reference: Sections 3330 and 3357, Business and Professions Code.

HISTORY:

1. Renumbering of Section 1399.114 to Section 1399.115 and adding new Section 1399.115 filed 1-24-91; effective thirtieth day thereafter.

2. Amendment of Section 1399.115 filed 11-2-98; effective thirtieth day thereafter.

3. Amendment of Section 1399.115 filed 4/27/01; approved 6/11/01.

### **1399.116. Supervision of Trainee-Applicants.**

(a) A licensed hearing aid dispenser shall not supervise more than one trainee-applicant at any one time unless a specific waiver has been granted by the bureau. Criteria for such a waiver shall be:

(1) the supervising dispenser shall have possessed a valid license as a hearing aid dispenser and engaged in the practice of fitting and selling hearing aids for at least three (3) years;

(2) the supervising dispenser has not been the subject of successful disciplinary action or of a complaint which has been investigated and verified by internal investigation report or the department's Division of Investigation within the preceding three (3) years; and

(3) the supervising dispenser shall not have been found to be in violation of any of the regulations contained in this article within the preceding three (3) years.

(b) A licensed hearing aid dispenser shall not in any circumstance supervise more than three (3) trainee-applicants at any one time.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Sections 3330 and 3357, Business & Professions Code.

HISTORY: Amendment of Section 1399.116 filed 4/27/01; approved 6/11/01.

### **1399.117. Representation of Trainee-Applicant.**

A trainee-applicant shall, when engaged in the fitting or selling of hearing aids, present himself or herself to the public as a hearing aid dispenser trainee. Trainee-applicants may not refer to themselves in any advertising or promotional literature as anything but a hearing aid dispenser trainee.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Sections 3357 and 3401, Business & Professions Code.

### **1399.118. Supervision and Training Required.**

The supervision and training of a trainee-applicant under Section 3357 of the code engaged in the fitting or selling of hearing aids shall include the following:

- (a) Intervention into the fitting and selling process by the supervisor.
- (b) Inspection of the fitting and selling process by the supervisor.
- (c) Training consisting of the following:
  - (1) Review of the results of each fitting and sale of a hearing aid;
  - (2) Reevaluation of the fitting and selling techniques of the trainee-applicant at least weekly;
  - (3) Being readily available to the trainee-applicant to render advice and give instruction and assistance in the fitting and selling of hearing aids;
- (d) Instruction in the procedures for the fitting and selling of hearing aids required by Chapter 7.5, Division 2 of the code.
- (e) Training with instruments and equipment generally considered to produce valid hearing measurements necessary to the fitting and selling of hearing aids.
- (f) A statement that the supervisor has agreed to accept the responsibility for the supervision and training of the applicant as required by Section 3357 of the code.
- (g) The supervisor shall be responsible for providing supervision until whichever of the following first occurs:
  - (1) The trainee-applicant obtains a permanent license.
  - (2) The supervisor or trainee-applicant gives written notification to the bureau that he or she is terminating supervision and training.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Section 3357, Business & Professions Code.

HISTORY: Amendment of Section 1399.118 filed 4/27/01; approved 6/11/01.

### **1399.119. Direct Supervision.**

A trainee-applicant under Section 3357 of the code shall fit or sell hearing aids only under the direct supervision of the supervising licensed hearing aid dispenser. "Direct supervision" as used in this section means all of the following:

- (a) The supervising dispenser is present within the same work setting a minimum of 20 percent of the time in which the trainee-applicant is providing services.
- (b) The supervising dispenser shall approve the selection of a hearing aid by a trainee-applicant.
- (c) The supervising dispenser shall countersign the audiogram and all sales documents prepared and consummated by a trainee-applicant.
- (d) If a trainee-applicant fails the license examination, the supervising dispenser is required to be physically present at all fittings and sales made by the trainee-applicant regardless of whether these occur in or outside the supervising dispenser's business location.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Section 3357, Business & Professions Code.

## **Article 4. Examinations**

### **1399.120. Examinations.**

- (a) Either essay type or objective type examinations or both may be used in any one or more of the subject areas in which an applicant is to be examined.
- (b) Each applicant is forbidden to place any identification marks on or in any of the answer sheet or to reveal his or her name to any examiner.
- (c) The applicant is forbidden to take the questions from the examination room or make any record of the questions.
- (d) Anyone cheating will be removed from the examination room.
- (e) An applicant who wishes to take the practical examination shall file a completed application with the bureau not sooner than 51 days nor later than 30 days prior to the date set for the examination for which application is made. Applications will be accepted in the order received by the bureau, provided, however, that a maximum of fifty applicants will be scheduled for any administration of the practical examination. Applications will be returned to all those who are not within the first fifty applicants.
- (f) The practical examination shall cover the procedures and use of instruments and equipment



commonly employed in the fitting and selling of hearing aids, including but not limited to:

- (1) Otoscope for the visual examination of the entire ear canal;
- (2) Pure tone discreet or sweep frequency threshold type audiometer with air and bone conduction and appropriate masking circuitry;
- (3) Appropriate equipment for establishing speech reception threshold and speech discrimination scores through headphones and/or sound field media by recorded or live voice;
- (4) Calibrated sound pressure instruments, master hearing aids, and any and all types of hearing aid simulators; and
- (5) Equipment designed for the evaluation and testing of hearing aid performance;
- (6) Stethoscope or other listening device.
- (g) An applicant shall furnish all equipment and materials necessary for the practical examination, and shall either bring a subject for the ear impression and audiometric assessment portions of the practical examination, or shall serve as such a subject for a subsequent examinee.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Section 3353, Business & Professions Code.

HISTORY:

1. Amendment of Section 1399.120 filed 3-20-96; effective thirtieth day thereafter.
2. Amendment of Section 1399.120 filed 6-19-98; effective thirtieth day thereafter.
3. Amendment of Section 1399.120 filed 7-28-99; effective thirtieth day thereafter
4. Amendment of Section 1399.120 filed 4/27/01; approved 6/11/01.

### **1399.121. Inspection of Examination Papers.**

All written examination papers shall be retained by the bureau for a period of two years after the date of the examination.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Section 3353, Business & Professions Code.

HISTORY: Amendment of Section 1399.121 filed 4/27/01; approved 6/11/01.

### **1399.122. Practical Examination Appeals.**

(a) An applicant who has failed the practical examination may appeal to the bureau within sixty (60) days following receipt of his/her examination results. The bases for appeal are:

(1) examiner misconduct, which means prejudice or bias as evidenced by the statements and/or actions of an examiner; and

(2) significant procedural error in the examination process.

(b) The appeal shall be in writing and shall specify the grounds upon which the appeal is based.

(c) An applicant will be notified in writing of the results of the appeal. In acting on appeals, the bureau may take such action as it deems appropriate.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Section 3353, Business & Professions Code.

HISTORY:

1. Addition of Section 1399.122 filed 3-20-96; effective thirtieth day thereafter.
2. Amendment of Section 1399.122 filed 4/27/01; approved 6/11/01.

## **Article 5. Miscellaneous**

### **1399.125. Annual Reports.**

NOTE: Authority cited: Section 3321, Business & Professions Code.

HISTORY:

1. Repealer filed 5-6-83; effective thirtieth day thereafter (Register 83, No. 19).

### **1399.126. Significant Air-Bone Gap.**

(a) For purposes of Section 3365.5 of the code, a significant air-bone gap is defined as a difference of 15 decibels or more between the higher air conduction and the lower bone conduction pure tone thresholds at 2 or more succeeding octave frequencies of 500 Hertz through and including 4000 Hertz.

(b) Tests for significant air-bone gap shall be performed in a suitable environment using appropriate equipment to establish threshold values and with appropriate masking procedures employed.

### 1399.127. Advertising.

(a) A licensed hearing aid dispenser may advertise any goods or services authorized to be provided by such license in a manner authorized by Section 651 of the code so long as such advertising does not promote the unnecessary or excessive use of such goods or services.

(b) An advertisement violates Section 651 of the code when it:

(1) Is not exact, and any conditions or other variables to an advertised price are not disclosed.

(2) Includes a statement of price comparison that is not based upon verifiable data.

(3) Advertises a discount in a false or misleading manner, including but not limited to, failing to disclose the dates on which the sale or discount price will be in effect if the sale or discount price is a limited time offer.

*When advertising a specific hearing aid model:*

Correct: 50% off Acme Model 12  
Regularly \$1000, Now \$500

Incorrect: 50% off Acme hearing aid

*When advertising a category of hearing aids (e.g. all models from one manufacturer, or all BTE models):*

Correct: 50% off Manufacturer's Suggested Retail Price  
All Acme Hearing Aids

Incorrect: Acme Hearing Aids - 50% Off

Correct: 50% off Manufacturer's Suggested Retail Price, All Hearing Aids  
Offer good January 1-7, 1998 (or Offer expires January 7, 1998)

Incorrect: 50% off Manufacturer's Suggested Retail Price, All Hearing Aids

(4) Utilizes a business name that is so broad as to connote comprehensive and diagnostic hearing services, unless the dispenser is also licensed as a physician or audiologist.

Correct: Delta Hearing Aid Center

Incorrect: Delta Hearing Center

(5) Advertises hearing tests without qualification as to the nature of the hearing testing that may be performed by a hearing aid dispenser.

Correct: Test to determine if you could be helped by a hearing aid

Incorrect: Hearing test

(6) Includes sending to a consumer preset appointment information or "rebate coupons" that resemble checks as part of a direct mail solicitation.

(7) Includes an educational degree but does not list the degree and field, or includes the title "Dr." where the degree is a non-medical doctorate and the advertisement does not disclose that fact.

Correct: John Doe, Ph.D. in Audiology                      Jane Doe, M.A. in Audiology  
John Doe, Ph.D. (Audiology)                      Jack Doe, B.A. (Audiology)

Incorrect: Dr. John Doe                      Jane Doe, M.A.  
Dr. John Doe (Audiology)                      Jack Doe, B.A.

(8) Includes abbreviations for job titles or job certifications as letters after a name where those letters do not represent an academic degree or credential.

(9) Refers to a dispenser's certification by a professional organization but either does not include the name of the certifying organization or, includes the name written in a manner not easily understood by consumers.

Correct: John Doe, Hearing Aid Dispenser Lic. No. HA-xxxx  
NB-HIS, Certified by the National Board of Certification in Hearing  
Instrument Sciences

Incorrect: John Doe, NB-HIS

(10) Includes the term "specialist" when referencing licensure without including the title "hearing aid dispenser."

Correct: Jane Doe, Hearing Aid Dispenser Lic. No. HA-xxxx  
Jack Doe, Licensed Hearing Aid Dispenser  
John Doe, Hearing Instrument Specialist  
Hearing Aid Dispenser Lic. No. HA-xxxx

Incorrect: Jane Doe, Hearing Aid Specialist Lic. No. HA-xxxx  
Jack Doe, Licensed Hearing Aid Specialist

(c) Any national advertisement run in California shall comply with California laws and regulations.

NOTE: Authority Cited: Section 3328, Business and Professions Code. Reference: Sections 651, 651.3 and 3401, Business and Professions Code.

HISTORY:

1. Amendment of Section 1399.127 filed 3-10-00; effective thirtieth day thereafter.

### **1399.129. Application and Certificate Fees.**

HISTORY:

1. Repealer filed 3-20-96; effective thirtieth day thereafter.

## **Article 6. Enforcement**

### **1399.130. Petition for Reinstatement or Reduction of Penalty.**

NOTE: Authority cited: Section 3328, Business & Professions Code.

HISTORY:

1. Repealer filed 5-6-83, effective thirtieth day thereafter (Register 83, No. 19).

### **1399.131. Disciplinary Guidelines**

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the director shall consider the disciplinary guidelines entitled "Disciplinary Guidelines and Model Disciplinary Orders" Sixth Edition, June 1997 which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the director in his or her sole discretion determines that the facts of the particular case warrant such a deviation -- for example: the presence of mitigating factors; the age of the case; evidentiary problems.

Note: Authority Cited: Section 3328, Business and Professions Code, Sections 11400.20 and 11425.50(e), Government Code.

Reference: Sections 3400, 3401, 3402, and 3403, Business and Professions Code, Sections 11400.20 and 11425.50(e), Government Code.

HISTORY:

1. Repealer filed 5-6-83; effective thirtieth day thereafter (Register 83, No. 19).
2. Addition of Section 1399.131 filed 6-17-98; effective thirtieth day thereafter.
3. Amendment of Section 1399.131 filed 4/27/01; approved 6/11/01.

### **1399.132. Substantial Relationship Criteria.**

For the purpose of denial, suspension, or revocation of a hearing aid dispenser's license pursuant to Division 1.5 (commencing with Section 475) of the Business & Professions Code, a crime or act shall be considered substantially related to the qualifications, functions, and duties of a hearing aid dispenser if to a substantial degree it evidences present or potential unfitness of a hearing aid dispenser to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to those involving the following:

(a) Any violation of the provisions of Sections 650, 651, 651.3 and 655.2 of the code.

(b) Any violation of the provisions of Chapter 7.5, Division 2 of the Business & Professions Code.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Sections 481, 3401 and 3403, Business & Professions Code.

### **1399.133. Criteria for Rehabilitation--Denials and Reinstatements.**

(a) When considering the denial of a license or a temporary license under Section 480 of the code, or the reinstatement of a license, the bureau, in evaluating the rehabilitation of the applicant and his or her present eligibility for licensing, shall consider the following criteria:

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business & Professions Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Sections 482, 3401 and 3403, Business & Professions Code.

HISTORY: Amendment of Section 1399.133 filed 4/27/01; approved 6/11/01.

#### **1399.134. Criteria for Rehabilitation--Suspensions and Revocations.**

When considering the suspension or revocation of a license or a temporary license on the grounds that the licensee has been convicted of a crime, the bureau, in evaluating the rehabilitation of such person and his present eligibility for a license or temporary license, will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) Extent of time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any or all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Sections 482, 3401 and 3403, Business & Professions Code.

HISTORY: Amendment of Section 1399.134 filed 4/27/01; approved 6/11/01.

#### **1399.135. Issuance of Citations**

(a) The chief of the bureau is authorized to determine after due and reasonable examination of the alleged violation when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by a licensed hearing aid dispenser of the statutes and regulations referred to in this article. As used in this article "licensed hearing aid dispenser" also includes one who holds a temporary license as a hearing aid dispenser.

(b) A citation shall be issued whenever any fine is levied or any order of abatement is issued. Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute or regulations alleged to have been violated. The citation shall be served upon the individual personally or by certified mail.

NOTE: Authority cited: Sections 125.9, 125.95 and 3328, Business and Professions Code. Reference: Sections 125.9 and 125.95, Business and Professions Code.

HISTORY: Amendment of Section 1399.135 filed 4/27/01; approved 6/11/01.

#### **1399.136 Amount of Fines**

The amount of any fine to be levied by the chief shall take into consideration the factors listed in subdivision (b)(3) of Section 125.9 of the code and shall be within the range set forth in each subsection below.

(a) The fine for a violation of the following provisions shall be from \$1100 to \$2500:

(1) Business and Professions Code section 3350

(2) Business and Professions Code section 3359, subdivision (a)

(3) Business and Professions Code section 3364, subdivision (b)

(4) Business and Professions Code section 3365.5

(5) Business and Professions Code section 3365.6

(6) Business and Professions Code section 3401, subdivision (f)

(7) Business and Professions Code section 3401, subdivision (h)

(8) Civil Code 1689.6

(9) Civil Code 1793.02

(b) The fine for a violation of the following provisions shall be from \$100 to \$1000:

- (1) Business and Professions Code section 651
- (2) Business and Professions Code section 3357
- (3) Business and Professions Code section 3359, subdivision (b)
- (4) Business and Professions Code section 3362
- (5) Business and Professions Code section 3363
- (6) Business and Professions Code section 3364, subdivision (a)
- (7) Business and Professions Code section 3364, subdivision (c)
- (8) Business and Professions Code section 3365
- (9) Business and Professions Code section 3366
- (10) Business and Professions Code section 3401, subdivision (i)
- (11) Title 16 California Code of Regulation section 1399.116, subsection (a)
- (12) Title 16 California Code of Regulation section 1399.116, subsection (b)
- (13) Title 16 California Code of Regulation section 1399.117
- (14) Title 16 California Code of Regulation section 1399.119
- (15) Title 16 California Code of Regulation section 1399.142

(c) In her or his discretion, the chief may issue an order of abatement without levying a fine for the first violation of any provision set forth in subsection (b).

NOTE: Authority cited: Sections 125.9, and 3328, Business and Professions Code. Reference: Sections 125.9 and 3401, Business and Professions Code.

HISTORY:

1. Amendment of Section 1399.136 filed 8-19-98; effective thirtieth day thereafter.
2. Amendment of Section 1399.136 filed 4/27/01; approved 6/11/01.

### **1399.137. Compliance with Orders of Abatement.**

(a) If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the person cited may request an extension of time from the chief in which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) When an order of abatement is not contested or if the order is appealed and the person cited does not prevail, failure to abate the violation charged within the time allowed shall constitute a violation and failure to comply with the order of abatement. An order of abatement shall either be personally served or mailed by certified mail, return receipt requested. The time allowed for the abatement of a violation shall begin when the order of abatement is final and has been served or received. Such failure may result in disciplinary action being taken by the bureau or other appropriate judicial relief being taken against the person cited.

NOTE: Authority cited: Sections 125.9, 125.95 and 3328, Business and Professions Code. Reference: Sections 125.9 and 125.95, Business and Professions Code.

HISTORY: Amendment of Section 1399.137 filed 4/27/01; approved 6/11/01.

### **1399.138. Citations for Unlicensed Practice.**

The chief of the bureau is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines against persons, partnerships, corporations or associations who are performing or who have performed services for which licensure as a hearing aid dispenser is required under the Hearing Aid Dispensers Licensing Law. Each citation issued shall contain an order of abatement. Where appropriate, the chief shall levy a fine for such unlicensed activity in accordance with subdivision (b) (3) of section 125.9 of the Code. The provisions of sections 1399.135 and 1399.137 shall apply to the issuance of citations for unlicensed activity under this subsection. The sanction authorized under this section shall be separate from and in addition to any other civil or criminal remedies.

NOTE: Authority cited: Sections 125.9, 125.95 and 3328, Business and Professions Code. Reference: Sections 125.9 and 125.95, Business and Professions Code.

HISTORY: Amendment of Section 1399.138 filed 4/27/01; approved 6/11/01.

### **1399.139. Contest of Citations.**

(a) In addition to requesting a hearing provided for in subdivision (b) (4) of section 125.9 of the code, the person cited may, within ten (10) days after service or receipt of the citation, notify the chief in writing of his or her request for an informal conference with the chief regarding the acts charged in the citation. The time allowed for the request shall begin the first day after the citation has been served or received.

(b) The chief shall hold, within 30 days from the receipt of the request, an informal conference with the person cited or his or her legal counsel or authorized representative. At the conclusion of the informal conference the chief may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued. The chief shall state in writing the reasons for his or her action and serve or mail, as provided in subsection (b) of section 1399.137, a copy of his or her findings and decision to the person cited within ten days from the date of the informal conference. This decision shall be deemed to be a final order with regard to the citation issued, including the fine levied and the order of abatement.

(c) The person cited does not waive his or her request for a hearing to contest a citation by requesting an informal conference after which the citation is affirmed by the chief. If the citation is dismissed after the informal conference, the request for a hearing on the matter of the citation shall be deemed to be withdrawn. If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and new citation issued. If a hearing is requested for the subsequent citation, it shall be requested within 30 days in accordance with subdivision (b) (4) of section 125.9.

NOTE: Authority cited: Sections 125.9, 125.95 and 3328, Business and Professions Code. Reference: Sections 125.9 and 125.95, Business and Professions Code.

HISTORY: 1. Addition of Sections 1399.135 - 1399.139 filed 4-19-91; effective thirtieth day thereafter.

2. Amendment of Section 1399.139 filed 4/27/01; approved 6/11/01.

## **Article 7. Continuing Education**

### **1399.140. Continuing Education Required.**

(a) Each dispenser is required to complete at least six (6) hours of continuing education from a provider approved under Section 1399.141 below during each calendar year. For all licenses which expire on and after January 1, 1997, all holders of licenses shall complete nine (9) hours of continuing education per year, and not more than three (3) hours of continuing education may be credited in any of the following areas related to hearing aids: ethics (including the ethics of advertising and marketing) or business practices.

(b) Each dispenser renewing his or her license under the provisions of Section 3451 of the code shall be required to submit proof satisfactory to the bureau of compliance with the provisions of this article.

(c) Such proof shall be submitted at the time of license renewal on a form provided by the bureau.

(d) Any dispenser who cannot complete the minimum hours required under subsection (a) may have his or her license renewed, but shall make up any deficiency during the following year. If the dispenser does not complete the deficient hours in addition to the minimum hours for the current year, he or she shall be ineligible for the next renewal of his or her license unless such dispenser applies for and obtains a waiver pursuant to Section 1399.144 below.

(e) This article shall not apply to any dispenser who was issued a permanent license for the first time within the preceding calendar year.

(f) Any person whose hearing aid dispenser's license has been expired for two years or more shall complete the required hours of approved continuing education for the prior two years before such license may be restored.

NOTE: Authority and reference cited: Section 3327.5, Business & Professions Code.

HISTORY:

1. Amendment of Section 1399.140 filed 3-20-96; effective thirtieth day thereafter.

2. Amendment of Section 1399.116 filed 4/27/01; approved 6/11/01.

### **1399.141. Approval of Continuing Education Providers.**

(a) In order to be approved by the bureau as a continuing education provider the following information shall be submitted with an application provided by the bureau:

(1) Description of course content of all courses to be offered. The course content shall be current

practices related to the fitting of hearing aids for aiding or compensating for impaired human hearing or any of the subjects listed in subsection (a) of section 1399.140. The course content shall be information related to the fitting of hearing aids, and this information shall be at a level above that basic knowledge required for licensure as set forth in Section 3353 of the Code, except that basic knowledge which would serve as a brief introduction to the course. The phrase "at a level above that basic knowledge" means any subjects, issues, topics, theories, or findings that are more advanced than the entry level of knowledge described in those basic subjects listed in subdivision (b) of Section 3353.

(2) Method of instruction for course(s) offered. Teaching methods for each course of program shall be described, e.g., lecture, seminar, audiovisual, simulation, etc.

(3) Education objectives. Each course or program shall clearly state the educational objective that can be realistically accomplished within the framework of the course or program, and the number of hours of continuing education credit which may be obtained by completion of a specified course.

(4) Qualifications of instructors. Instructors shall be qualified to teach the specified course content by virtue of their prior education, training and experience. A resume of each instructor shall be forwarded with the application for approval.

(5) Evaluation. Each course or program shall include an evaluation method which documents that educational objectives have been met, such as, but not limited to, a written evaluation or written examination by each participant.

(6) Open to licensees. Only those courses or programs which are open to all licensed hearing aid dispensers shall be approved by the bureau.

(b) Providers shall maintain a record of attendance of each participant who is licensed as a hearing aid dispenser and submit that record to the bureau no later than December 31 of each calendar year. The record shall indicate those dispensers who have complied with the requirements of the course or program offered.

(c) Applications for approval of a continuing education provider shall be submitted to the bureau at its Sacramento office at least 45 days before the date of the first course or program offering to be approved.

(d) Any change in the course content or instructor shall be reported to the bureau on a timely basis.

(e) The bureau may withdraw the approval of any provider for failure to comply with the provisions of this section.

(f) Each provider shall submit to the bureau on an annual basis a description or outline of each approved course to be offered the following year and a resume of any new instructor who will be presenting the course. This information shall be submitted prior to the re-offering of the course within the time limit set forth in subsection (c).

NOTE: Authority cited: Section 3327.5, Business & Professions Code. Reference: Section 3327.5, Business & Professions Code.

HISTORY:

1. Amendment of Section 1399.141 filed 3-20-96; effective thirtieth day thereafter.
2. Amendment of Section 1399.141 filed 6-15-98; effective thirtieth day thereafter.
3. Amendment of Section 1399.141 filed 4/27/01; approved 6/11/01.

### **1399.142. Sanctions for Noncompliance.**

(a) Any dispenser who does not complete the required number of hours of continuing education will be required to make up any deficiency during the next calendar year and renewal cycle. Such dispenser shall document to the bureau the completion of any deficient hours. Any dispenser who fails to make up the deficient hours and the hours of required continuing education for the current year shall be ineligible for the next renewal of his or her license to dispense hearing aids until such time as the deficient hours of continuing education are documented to the bureau.

(b) Fraudulently misrepresenting compliance with the continuing education requirements of Section 3327.5 of the code and this article shall constitute "obtaining a license by fraud or deceit" as those terms are used in Section 3401, subd. (c), of the code.

NOTE: Authority cited: Sections 3327.5 and 3328, Business & Professions Code. Reference: Section 3327.5, Business & Professions Code.

HISTORY: Amendment of Section 1399.142 filed 4/27/01; approved 6/11/01.

### **1399.143. Repetition of Courses.**

Credit will not be given toward approved continuing education coursework which is substantially similar to coursework which was successfully completed within the preceding three (3) years and used to

meet the continuing education requirements of this article and Section 3327.5 of the code.

NOTE: Authority and reference cited: Section 3327.5, Business & Professions Code.

**1399.144. Waiver of Requirement.**

(a) The bureau, may, in its discretion exempt from the continuing education requirements, any dispenser who for reasons of health, military service, or undue hardship cannot meet those requirements. Applications for waivers shall be submitted to the bureau for its consideration.

(b) Any dispenser who submits an application for a waiver which is denied by the bureau, shall otherwise comply with the provisions of this article or be subject to the sanctions for noncompliance set forth in Section 1399.142.

NOTE: Authority and reference cited: Section 3327.5, Business & Professions Code.

HISTORY: Amendment of Section 1399.144 filed 4/27/01; approved 6/11/01.

(Revised 9/2001)



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## Related Laws

The laws included in this section are taken from the Business & Professions Code, the California Civil Code, and the Public Utilities Code, and are not part of the Hearing Aid Dispensers License Law. These sections are provided for the hearing aid dispenser since they are related to the practice of fitting and selling hearing aids.

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# **Business and Professions Code Division 1.5**

## **Denial, Suspension, and Revocation of Licenses**

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### **Chapter 1. General Provisions**

#### **Applicability**

**475.** (a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

### **Chapter 2. Denial of Licenses**

#### **Grounds for Denial**

**480.** (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(3) Done any act which if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he has been convicted of a felony if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code or that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.

(Amended by Stats. 1979, Ch. 876.)

#### **Criteria for Related Crimes Required**

**481.** Each board under the provisions of this code shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

### **Criteria for Rehabilitation Required**

**482.** Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

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## **Business and Professions Code Article 6**

### **Advertising and Prohibited Arrangements**

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#### **Considerations for Referrals Prohibited**

**650.** Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code, the offer, delivery, receipt, or acceptance by any person licensed under this division of any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest or coownership in or with any person to whom these patients, clients or customers are referred is unlawful.

The payment or receipt of consideration for services other than the referral of patients which is based on a percentage of gross revenue or similar type of contractual arrangement shall not be unlawful if the consideration is commensurate with the value of the services furnished or with the fair rental value of any premises or equipment leased or provided by the recipient to the payor.

Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Sections 654.1 and 654.2, it shall not be unlawful for any person licensed under this division to refer a person to any laboratory, pharmacy, clinic (including entities exempt from licensure pursuant to Section 1206 of the Health and Safety Code), or health care facility solely because the licensee has a proprietary interest or coownership in the laboratory, pharmacy, clinic, or health care facility; provided, however, the licensee's return on investment for that proprietary interest or coownership shall be based upon the amount of the capital investment or proportional ownership of the licensee which ownership interest is not based on the number or value of any patients referred. Any referrals excepted under this section shall be unlawful if the prosecutor proves that there was no valid medical need for the referral.

"Health care facility" means a general acute care hospital, acute psychiatric hospital, skilled nursing facility, intermediate care facility, and any other health facility licensed by the State Department of Health Services under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding fifty thousand dollars (\$50,000), or both such imprisonment and fine. A second or subsequent conviction is punishable by imprisonment in the state prison or by imprisonment in the state prison and a fine of fifty thousand dollars (\$50,000).

#### **Advertising; Fraudulent, Misleading, or Deceptive**

**651.** (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated, any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.

(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a statement or claim that does any of the following:

- (1) Contains a misrepresentation of fact.
- (2) Is likely to mislead or deceive because of a failure to disclose material facts.
- (3) (A) Is intended or is likely to create false or unjustified expectations of favorable results, including the use of any photograph or other image that does not accurately depict the results of the procedure being advertised or that has been altered in any manner from the image of the actual subject depicted in the photograph or image.

(B) Use of any photograph or other image of a model without clearly stating in a prominent location

in easily readable type the fact that the photograph or image is of a model is a violation of subdivision(a). For purposes of this paragraph, a model is anyone other than an actual patient, who has undergone the procedure being advertised, of the licensee who is advertising for his or her services.

(C) Use of any photograph or other image of an actual patient that depicts or purports to depict the results of any procedure, or presents "before" and "after" views of a patient, without specifying in a prominent location in easily readable type size what procedures were performed on that patient is a violation of subdivision (a). Any "before" and "after" views (i) shall be comparable in presentation so that the results are not distorted by favorable poses, lighting, or other features of presentation, and (ii) shall contain a statement that the same "before" and "after" results may not occur for all patients.

(4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.

(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(6) Makes a claim either of professional superiority or of performing services in a superior manner, unless that claim is relevant to the service being performed and can be substantiated with objective scientific evidence.

(7) Makes a scientific claim that cannot be substantiated by reliable, peer reviewed, published scientific studies.

(8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive because of a failure to disclose material facts.

(c) Any price advertisement shall be exact, without the use of such phrases, including but not limited to, "as low as" "and up," "lowest prices" or words or phrases of similar import. Any advertisement that refers to services, or costs for services, and that uses words of comparison shall be based on verifiable data substantiating the comparison. Any person so advertising shall be prepared to provide information sufficient to establish the accuracy of that comparison. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

(d) Any person so licensed shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity unless the fact of compensation is made known in such publicity.

(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision, but only to this subdivision.

(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

(h) Advertising by any person so licensed may include the following:

(1) A statement of the name of the practitioner.

(2) A statement of addresses and telephone numbers of the offices maintained by the practitioner.

(3) A statement of office hours regularly maintained by the practitioner.

(4) A statement of languages, other than English, fluently spoken by the practitioner or a person in the practitioner's office.

(5) (A) A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his or her practice to specific fields. For the purposes of this section, the statement of a practitioner licensed under Chapter 4 (commencing with Section 1600) who limits his or her practice to a specific field or fields, shall only include a statement that he or she is certified or is eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board. A statement of certification by a practitioner licensed under Chapter 7 (commencing with Section 3000) shall only include a statement that he or she is certified or eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board.

(B) A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his or her practice to specific fields, but shall not include a statement that he or she is certified or eligible for certification by a private or

public board or parent association, including, but not limited to, a multidisciplinary board or association, unless the board or association is (i) an American Board of Medical Specialties member board, (ii) a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or (iii) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification, unless the physician and surgeon is also licensed under Chapter 4 (commencing with Section 1600) and the use of the term "board certified" in reference to that certification is in accordance with subparagraph (A). A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the Medical Board of California, for certifying medical doctors and other health care professionals that is based on the applicant's education, training, and experience.

For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is an American Board of Medical Specialties member board, an organization with equivalent requirements approved by a physician and surgeon's licensing board, or an organization with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in a specialty or subspecialty.

The Medical Board of California shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph. The fee shall not exceed the cost of administering this subparagraph. Notwithstanding Section 2 of Chapter 1660 of the Statutes of 1990, this subparagraph shall become operative July 1, 1993. However, an administrative agency or accrediting organization may take any action contemplated by this subparagraph relating to the establishment or approval of specialist requirements on and after January 1, 1991.

(C) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii), shall not use the term "board certified" in reference to that certification.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the California Board of Podiatric Medicine, for certifying doctors of podiatric medicine that is based on the applicant's education, training, and experience. For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is a Council on Podiatric Medical Education approved board, an organization with equivalent requirements approved by the California Board of Podiatric Medicine, or an organization with a Council on Podiatric Medical Education approved postgraduate training program that provides training in podiatric medicine and podiatric surgery.

The California Board of Podiatric Medicine shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph, to be deposited in the State Treasury in the Podiatry Fund, pursuant to Section 2499. The fee shall not exceed the cost of administering this subparagraph.

(6) A statement that the practitioner provides services under a specified private or public insurance plan or health care plan.

(7) A statement of names of schools and postgraduate clinical training programs from which the

practitioner has graduated, together with the degrees received.

(8) A statement of publications authored by the practitioner.

(9) A statement of teaching positions currently or formerly held by the practitioner, together with pertinent dates.

(10) A statement of his or her affiliations with hospitals or clinics.

(11) A statement of the charges or fees for services or commodities offered by the practitioner.

(12) A statement that the practitioner regularly accepts installment payments of fees.

(13) Otherwise lawful images of a practitioner, his or her physical facilities, or of a commodity to be advertised.

(14) A statement of the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised.

(15) An advertisement of a registered dispensing optician may include statements in addition to those specified in paragraphs (1) to (14), inclusive, provided, that any such statement shall not violate subdivision (a), (b), (c), or (e) of this section or any other section of this code.

(16) A statement, or statements, providing public health information encouraging preventative or corrective care.

(17) Any other item of factual information that is not false, fraudulent, misleading, or likely to deceive.

(i) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by businesses or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

(j) The Attorney General shall commence legal proceedings in the appropriate forum to enjoin advertisements disseminated or about to be disseminated in violation of this section and seek other appropriate relief to enforce the provisions of this section. Notwithstanding any other provision of law, the costs of enforcing this section to the respective licensing boards or committees may be awarded against any licensee found to be in violation of any provision of this section. This shall not diminish the power of district attorneys, county counsels, or city attorneys pursuant to existing law to seek appropriate relief.

(k) A physician and surgeon or doctor of podiatric medicine licensed pursuant to Chapter 5 (commencing with Section 2000) by the Medical Board of California who knowingly and intentionally violates this section may be cited and assessed an administrative fine not to exceed ten thousand dollars (\$10,000) per event. Section 125.9 shall govern the issuance of this citation and fine except that the fine limitations prescribed in paragraph (3) of subdivision (b) of Section 125.9 shall not apply to a fine under this subdivision.

(Amended by Stats 1999, Ch. 856; effective January 1, 2000)

## **Employment of Hearing Aid Dispensers**

**655.2** No physician and surgeon or medical corporation licensed under Chapter 5 (commencing with Section 2000), nor any audiologist who is not a licensed hearing aid dispenser shall employ any individual licensed pursuant to Chapter 7.5 (commencing with Section 3300) for the purpose of fitting or selling of hearing aids.

This section shall not apply to any physician and surgeon or medical corporation which contracts with or is affiliated with a comprehensive group practice health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act, Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(Added by Stats. 1979, Ch. 970.)

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# **Business and Professions Code Article 9**

## **Inactive License**

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### **Legislative Intent**

**700.** It is the intent of the Legislature to establish in this article an inactive category of health professionals' licensure. Such inactive licenses or certificates are intended to allow a person who has a license or certificate in one of the healing arts, but who is not actively engaged in the practice of his or her profession, to maintain licensure or certification in a non-practicing status.

### **Issuance**

**701.** Each healing arts board referred to in this division shall issue, upon application and payment of the normal renewal fee, an inactive license or certificate to a current holder of an active license or certificate whose license or certificate is not suspended, revoked, or otherwise punitively restricted by that board.

As used in this article, "board" refers to any healing arts board, division, or examining committee which licenses or certifies health professionals.

### **Prohibited Practice**

**702.** The holder of an inactive healing arts license or certificate issued pursuant to this article shall not engage in any activity for which an active license or certificate is required.

### **Renewal**

**703.** An inactive healing arts license or certificate issued pursuant to this article shall be renewed during the same time period at which an active license or certificate is renewed. In order to renew a license or certificate issued pursuant to this article, the holder thereof need not comply with any continuing education requirement for renewal of an active license or certificate.

The renewal fee for a license or certificate in an active status shall apply also for renewal of a license or certificate in an inactive status.

### **Restoration to Active Status**

**704.** In order for the holder of an inactive license or certificate issued pursuant to this article to restore his or her license or certificate to an active status, the holder of an inactive license or certificate shall comply with all the following

(a) Pay the renewal fee; provided, that the renewal fee shall be waived for a physician and surgeon who certifies to the Medical Board of California that license restoration is for the sole purpose of providing voluntary, unpaid service to a public agency, not-for-profit agency, institution, or corporation which provides medical services to indigent patients in medically underserved or critical-need population areas of the state.

(b) If the board requires completion of continuing education for renewers of an active license or certificate, complete continuing education equivalent to that required for a single license renewal period.

(Amended by Stats. 1999, Ch 631; effective January 1, 2000.)



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# Federal Trade Commission Disclosure Regulations (abridged)

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## Scope

**701.2.** The regulations in this part establish requirements for warrantors for disclosing the terms and conditions of written warranties on consumer products actually costing the consumer more than \$15.00.

## Written warranty terms

**701.3.** (a) Any warrantor warranting to a consumer by means of a written warranty a consumer product actually costing the consumer more than \$15.00 shall clearly and conspicuously disclose in a single document in simple and readily understood language, the following items of information:

- (1) The identity of the party or parties to whom the written warranty is extended, if the enforceability of the written warranty is limited to the original consumer purchaser or is otherwise limited to persons other than every consumer owner during the term of the warranty;
- (2) A clear description and identification of products, or parts, or characteristics, or components or properties covered by and where necessary for clarification, excluded from the warranty;
- (3) A statement of what the warrantor will do in the event of a defect, malfunction or failure to conform with the written warranty, including the items or services the warrantor will pay for or provide, and, where necessary for clarification, those which the warrantor will not pay for or provide;
- (4) The point in time or event on which the warranty term commences, if different from the purchase date, and the time period or other measurement of warranty duration;
- (5) A step-by-step explanation of the procedure which the consumer should follow in order to obtain performance of any warranty obligation, including the persons or class of persons authorized to perform warranty obligations. This includes the name(s) of the warrantor(s), together with: the mailing address(es) of the warrantor(s), and/or the name or title and the address of any employee or department of the warrantor responsible for the performance of warranty obligations, and/or a telephone number which consumers may use without charge to obtain information on warranty performance;
- (6) Information respecting the availability of any informal dispute settlement mechanism elected by the warrantor in compliance with Part 703 of this subchapter;
- (7) Any limitations on the duration of implied warranties, disclosed on the face of the warranty as provided in Section 108 of the Act, accompanied by the following statement:

Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.

- (8) Any exclusions of or limitations on relief such as incidental or consequential damages, accompanied by the following statement, which may be combined with the statement required in sub-paragraph (7) above:

Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

- (9) A statement in the following language:

The warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

- (b) Paragraph (a)(1) - (9) of this Section shall not be applicable with respect to statements of general policy on emblems, seals or insignias issued by third parties promising replacement or refund if a consumer product is defective, which statements contain no representation or assurance of the quality or performance characteristics of the product; provided that (1) the disclosures required by paragraph (a)(1)-(9) are published by such third parties in each issue of a publication with a general circulation, and (2) such disclosures are provided free of charge to any consumer upon written request.

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# California Civil Code Section 1689.5

## Out of Office Sales

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### Definitions

**1689.5.** As used in Sections 1689.6 to 1689.11, inclusive, and in Section 1689.14:

(a) "Home solicitation contract or offer" means any contract, whether single or multiple, or any offer which is subject to approval, for the sale, lease, or rental of goods or services or both, made at other than appropriate trade premises in an amount of twenty-five dollars (\$25) or more, including any interest or service charges. "Home solicitation contract" does not include any contract under which the buyer has the right to rescind pursuant to Title 1, Chapter 2, Section 125 of the Federal Consumer Credit Protection Act (P.L. 90-321) and the regulations promulgated pursuant thereto, or any contract for repair services with a contractor who is duly licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, if (1) the contract price is less than one hundred dollars (\$100), (2) the negotiation between the parties was initiated by the prospective buyer, and (3) the contract contains a written and dated statement signed by the prospective buyer stating that the negotiation between the parties was initiated by the prospective buyer.

(b) "Appropriate trade premises," means premises where either the owner or seller normally carries on a business, or where goods are normally offered or exposed for sale in the course of a business carried on at those premises.

(c) "Goods" means tangible chattels bought for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for these goods, and including goods that, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of the real property whether or not severable therefrom, but does not include any vehicle required to be registered under the Vehicle Code, nor any goods sold with this vehicle if sold under a contract governed by Section 2982, and does not include any mobilehome, as defined in Section 18008 of the Health and Safety Code, nor any goods sold with this mobilehome if either are sold under a contract subject to Section 18036.5 of the Health and Safety Code.

(d) "Services" means work, labor and services, including, but not limited to, services furnished in connection with the repair, restoration, alteration, or improvement of residential premises, or services furnished in connection with the sale or repair of goods as defined in Section 1802.1, and courses of instruction, regardless of the purpose for which they are taken, but does not include the services of attorneys, real estate brokers and salesmen, securities dealers or investment counselors, physicians, optometrists, or dentists, nor financial services offered by banks, savings institutions, credit unions, industrial loan companies, personal property brokers, consumer finance lenders, or commercial finance lenders, organized pursuant to state or federal law, that are not connected with the sale of goods or services, as defined herein, nor the sale of insurance that is not connected with the sale of goods or services as defined herein, nor services in connection with the sale or installation of mobilehomes or of goods sold with a mobilehome if either are sold or installed under a contract subject to Section 18036.5 of the Health and Safety Code, nor services for which the tariffs, rates, charges, costs, or expenses, including in each instance the time sale price, is required by law to be filed with and approved by the federal government or any official, department, division, commission, or agency of the United States or of the state.

(e) "Business day" means any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

## **Right to Cancel Home Solicitation Contract or Offer**

**1689.6.** (a) In addition to any other right to revoke an offer, the buyer has the right to cancel a home solicitation contract or offer until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with Section 1689.7.

(b) In addition to any other right to revoke an offer, any buyer has the right to cancel a home solicitation contract or offer for the purchase of a personal emergency response unit until midnight of the seventh business day after the day on which the buyer signs an agreement or offer to purchase which complies with Section 1689.7. This subdivision shall not apply to a personal emergency response unit installed with, and as part of, a home security alarm system subject to the Alarm Company Act (Chapter 11.6 (commencing with Section 7590) of Division 3 of the Business and Professions Code) which has two or more stationary protective devices used to enunciate an intrusion or fire and is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, which shall instead be subject to subdivision (a).

(c) In addition to any other right to revoke an offer, a buyer has the right to cancel a home solicitation contract or offer for the repair or restoration of residential premises damaged by a disaster that was not void pursuant to Section 1689.14, until midnight of the seventh business day after the buyer signs and dates the contract.

(d) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address specified in the agreement or offer.

(e) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(f) Notice of cancellation given by the buyer need not take the particular form as provided with the contract or offer to purchase and, however expressed, is effective if it indicates the intention of the buyer not to be bound by the home solicitation contract or offer.

(g) "Personal emergency response unit," for purposes of this section, means an in-home radio transmitter device or two-way radio device generally, but not exclusively, worn on a neck chain, wrist strap, or clipped to clothing, and connected to a telephone line through which a monitoring station is alerted of an emergency and emergency assistance is summoned.

(Amended by Stats.1993-94, 1st Ex.Sess.,c. 51)

## **Requisites of Home Solicitation Contract or Offer; Cancellation; Definition**

**1689.7.** (a) (1) In a home solicitation contract or offer the buyer's agreement or offer to purchase shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation, shall be dated, signed by the buyer, and except as provided in paragraph (2), shall contain in immediate proximity to the space reserved for his or her signature a conspicuous statement in a size equal to at least 10-point bold type, as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(2) The statement required pursuant to this subdivision for a home solicitation contract or offer for the purchase of a personal emergency response unit, as defined in Section 1689.6, which is not installed with and as part of a home security alarm system subject to the Alarm Company Act (Chapter 11.6 commencing with Section 7590) of Division 3 of the Business and Professions Code) which has two or more stationary protective devices used to enunciate an intrusion or fire and is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, is as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the seventh business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(3) The statement required pursuant to this subdivision for the repair or restoration of residential

premises damaged by a disaster pursuant to subdivision (c) of Section 1689.6 is as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the seventh business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(b) The agreement or offer to purchase shall contain on the first page, in a type size no smaller than that generally used in the body of the document, the following: (1) the name and address of the seller to which the notice is to be mailed, and (2) the date the buyer signed the agreement or offer to purchase.

(c) Except as provided in subdivision (d), the agreement or offer to purchase shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation" which shall be attached to the agreement or offer to purchase and be easily detachable, and which shall contain in type of at least 10-point the following statement written in the same language, e.g., Spanish, as used in the contract:

"Notice of Cancellation"

/Enter date of transaction/

(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to

—,

/name of seller/

at

/address of sellers place of business/

not later than midnight of

—

(Date)

I hereby cancel this transaction

(Date)

(Buyer's signature)

(d) Any agreement or offer to purchase a personal emergency response unit, as defined in Section 1689.6, which is not installed with and as part of a home security alarm system subject to the Alarm Company Act which has two or more stationary protective devices used to enunciate an intrusion of fire and is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, shall be subject to the requirements of subdivision (c), and shall be accompanied by the

"Notice of Cancellation" required by subdivision (c), except that the first paragraph of that notice shall be deleted and replaced with the following paragraph:

You may cancel this transaction, without any penalty or obligation, within seven business days from the above date.

(e) Any agreement or offer to purchase services for the repair or restoration of residential premises damaged by a disaster that is subject to subdivision (c) of Section 1689.6, shall be subject to the requirements of subdivision (c) of this section, and shall be accompanied by the "Notice of Cancellation" required by subdivision (c) of this section, except that the first paragraph of that notice shall be deleted and replaced with the following paragraph:

You may cancel this transaction, without any penalty or obligation, within seven business days from the above date.

(f) The seller shall provide the buyer with a copy of the contract or offer to purchase and the attached notice of cancellation, and shall inform the buyer orally of his or her right to cancel and the requirement that cancellation be in writing, at the time the home solicitation contract or offer is executed.

(g) Until the seller has complied with this section the buyer may cancel the home solicitation contract or offer.

(h) "Contract or sale" as used in subdivision (c) means "home solicitation contract or offer" as defined by Section 1689.5.

(Amended by Stats.1991, c 394 (A.B.585), subsection 2; Stats.1992, c 145(A.B.2378), subsection 2; Stats.1993, Chapter 589. (A.B.2211), subsection 22, Stats.1993-94, 1st Ex.Sess., c. 51 (A.B.57), subsection 3.)

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## California Civil Code Section 1793.02

### Song-Beverly Consumer Warranty Act

#### (abridged)

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(a) All new and used assistive devices sold at retail in this state shall be accompanied by the retail seller's written warranty which shall contain the following language: **"This assistive device is warranted to be specifically fit for the particular needs of you, the buyer. If the device is not specifically fit for your particular needs, it may be returned to the seller within 30 days of the date of actual receipt by you or completion of fitting by the seller, whichever occurs later. If you return the device, the seller will either adjust or replace the device or promptly refund the total amount paid. This warranty does not affect the protections and remedies you have under other laws."** In lieu of the words "30 days" the retail seller may specify any longer period.

(b) The language prescribed in subdivision (a) shall appear on the first page of the warranty in at least 10-point bold type. The warranty shall be delivered to the buyer at the time of the sale of the device.

(c) If the buyer returns the device within the period specified in the written warranty, the seller shall, without charge and within a reasonable time, adjust the device or, if appropriate, replace it with a device that is specifically fit for the particular needs of the buyer. If the seller does not adjust or replace the device so that it is specifically fit for the particular needs of the buyer, the seller shall promptly refund to the buyer the total amount paid, the transaction shall be deemed rescinded, and the seller shall promptly return to the buyer all payments and any assistive device or other consideration exchanged as part of the transaction and shall promptly cancel or cause to be cancelled all contracts, instruments, and security agreements executed by the buyer in connection with the sale. When a sale is rescinded under this section, no charge, penalty, or other fee may be imposed in connection with the purchase, fitting, financing, or return of the device.

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# Public Utilities Code Section 2881

## Certification for Telecommunications Equipment

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**2881** (a) The commission shall design and implement a program whereby each telephone corporation shall provide a telecommunications device capable of serving the needs of individuals who are deaf or hearing impaired, together with a single party line, at no charge additional to the basic exchange rate, to any subscriber who is certified as an individual who is deaf or hearing impaired by a licensed physician and surgeon, audiologist, or qualified state or federal agency, as determined by the commission, and to any subscriber that is an organization representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision (e). A licensed hearing aid dispenser may certify the need of an individual to participate in the program if that individual has been previously fitted with an amplified device by the dispenser and the dispenser has the individual's hearing records on file prior to certification.

(b) The commission shall also design and implement a program whereby each telephone corporation shall provide a dual-party relay system, using third-party intervention to connect individuals who are deaf or hearing impaired and offices of organizations representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision (e), with persons of normal hearing by way of intercommunications devices for individuals who are deaf or hearing impaired and the telephone system, making available reasonable access of all phases of public telephone service to telephone subscribers who are deaf or hearing impaired. In order to make a dual-party relay system that will meet the requirements of individuals who are deaf or hearing impaired available at a reasonable cost, the commission shall initiate an investigation, conduct public hearings to determine the most cost-effective method of providing dual-party relay service to the deaf or hearing impaired when using a telecommunications device, and solicit the advice, counsel, and physical assistance of statewide nonprofit consumer organizations of the deaf, during the development and implementation of the system. The commission shall phase in this program, on a geographical basis, over a three-year period ending on January 1, 1987. The commission shall apply for a certification of this program under rules adopted by the Federal Communications Commission pursuant to Section 401 of the Americans with Disabilities Act of 1990 (Public Law 101-336).

(c) The commission shall also design and implement a program whereby specialized or supplemental telephone communications equipment may be provided to subscribers who are certified to be disabled at no charge additional to the basic exchange rate. The certification, including a statement of medical need for specialized telecommunications equipment, shall be provided by a licensed physician and surgeon acting within the scope of practice of his or her license, or by a qualified state or federal agency as determined by the commission. The commission shall, in this connection, study the feasibility of, and implement, if determined to be feasible, personal income criteria, in addition to the certification of disability, for determining a subscriber's eligibility under this subdivision.

(d) The commission shall establish a rate recovery mechanism through a surcharge not to exceed one-half of 1 percent uniformly applied to a subscriber's intrastate telephone service, other than one-way radio paging service and universal telephone service, both within a service area and between service areas, to allow telephone corporations to recover costs as they are incurred under this section. The surcharge shall be in effect until January 1, 2001. The commission shall require that the programs implemented under this section be identified on subscribers' bills, and shall establish a fund and require separate accounting for each of the programs implemented under this section.

(e) The commission shall determine and specify those statewide organizations representing the deaf or hearing impaired which shall receive a telecommunications device pursuant to subdivision (a) or a dual-party relay system pursuant to subdivision (b), or both, and in which offices the equipment shall be installed in the case of an organization having more than one office. The commission shall direct the telephone corporations subject to its jurisdiction to comply with its determinations and specifications in this regard.

(f) The commission shall annually review the surcharge level and the balances in the funds established pursuant to subdivision (d). Until January 1, 2001, the commission shall be authorized to make, within the limits set by subdivision (d), any necessary adjustments to the surcharge to ensure that the programs supported thereby are adequately funded and that the fund balances are not excessive. A fund balance

which is projected to exceed six months' worth of projected expenses at the end of the fiscal year is excessive.

(g) The commission shall prepare and submit to the Legislature, on or before December 31, 1988, and annually thereafter, a report on the fiscal status of the programs established and funded pursuant to this section and Sections 2881.1 and 2881.2. The report shall include a statement of the surcharge level established pursuant to subdivision (d) and revenues produced by the surcharge, an accounting of program expenses, and an evaluation of options for controlling those expenses and increasing program efficiency, including, but not limited to, all of the following proposals:

(1) The establishment of a means test for persons to qualify for program equipment or free or reduced charges for the use of telecommunications services.

(2) If and to the extent not prohibited under Section 401 of the Americans with Disabilities Act of 1990 (Public Law 101-336), the imposition of limits or other restrictions on maximum usage levels for the relay service, which shall include the development of a program to provide basic communications requirements to all relay users at discounted rates, including discounted toll call rates, and, for usage in excess of those basic requirements, at rates which recover the full costs of service.

(3) More efficient means for obtaining and distributing equipment to qualified subscribers.

(4) The establishment of quality standards for increasing the efficiency of the relay system.

(h) In order to continue to meet the access needs of individuals with functional limitations of hearing, vision, movement, manipulation, speech, and interpretation of information, the commission shall perform ongoing assessment of, and if appropriate, expand the scope of the program to allow for additional access capability consistent with evolving telecommunications technology.

SEC. 2. It is the intent of the Legislature that the provisions of this act shall not increase the surcharges to fund the program implemented pursuant to subdivision (a) of Section 2881 of the Public Utilities Code.